



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
SURFCOMBER, INC. )

For Appellant: Robert K. Owens  
Vice President

For Respondent: Crawford H. Thomas  
Chief Counsel

David M. Hinman  
Counsel

OPINION

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying (to the extent of \$229.26) the claim of Surfcomber, Inc., for refund of franchise tax in the amount of \$515.86 for the taxable year ended April 30, 1973.

This case concerns the computation of a foreign corporation's franchise tax for the taxable year in which it is dissolved or withdraws from the state. The issue presented is whether the

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effective date of such dissolution or withdrawal is the date on which the corporation was dissolved in the state of its incorporation, or the date it filed a certificate of surrender with the California Secretary of State.

Surfcomber, Inc., a Delaware corporation which ran an apartment rental business in La Jolla, California, was dissolved in August 1972. Its assets were distributed to two individuals who began on August 5, 1972, to operate the business as a partnership. In connection with its dissolution, the corporation obtained a certificate of dissolution, dated August 7, 1972, from the Secretary of State of Delaware. It also received a tax clearance certificate from respondent Franchise Tax Board, and on November 24, 1972, filed a "Certificate of Surrender of Right to Transact Intrastate Business" with the California Secretary of State. It appears from the record that this certificate of surrender was the only document submitted by Surfcomber to the California Secretary of State regarding its dissolution.

Where a corporation dissolves or withdraws from California during its taxable year, it is liable for franchise tax for that year only for the months which precede the "effective date of such dissolution or withdrawal." (Rev. & Tax. Code, § 23332.) Surfcomber had reported its income on a fiscal year basis, and for the taxable year ended April 30, 1973, had prepaid California franchise tax of \$687.81. Since the corporation was dissolved during that year, it submitted a claim for refund for a portion of the prepaid tax.

In computing the amount to be refunded, Surfcomber used August 7, 1972, the date of the Delaware certificate of dissolution, as the "effective date of dissolution or withdrawal." It determined accordingly that tax was due only for the three months of its taxable year which preceded that date, and requested a refund of taxes prepaid for the remaining nine months, a total of \$515.86. The Franchise Tax Board, however, decided that the proper "effective date" was November 24, 1972, the day the certificate of surrender was filed with the Secretary of State. It therefore allowed a refund of only \$286.60, the amount of tax prepaid for the last five months of Surfcomber's taxable year, and disallowed the remaining \$229.26 of the corporation's refund claim. Surfcomber appeals to recover this latter amount.

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Surfcomber contends that the date of the Delaware certificate of dissolution should be considered the effective date because it did not and could not do business in California after that day. However, Revenue and Taxation Code section 23331 states in relevant part:

For the purposes of this article, the effective date of dissolution of a corporation is the date on which. . . the certificate of winding up and dissolution is filed in the office of the Secretary of State. For the purposes of this article, the effective date of withdrawal of a foreign corporation is the date on which the certificate of withdrawal is filed in the office of the Secretary of State.

We have previously held that, by the terms of this definition, the effective date of dissolution or withdrawal is the date an appropriate document is filed with the Secretary of State; regardless of when the corporation actually ceases doing business in California. (Appeal of Truck-A-Way Produce Express, Inc., Cal. St. Rd. of Equal., Feb. '26, 1969; Appeal of Hild Floor Machine Co., Inc., Cal. St. Rd. of Equal., March 7, 1961.)

Surfcomber also suggests that August 5, 1972; the date the partnership opened its books, ought to be used to compute the refund. It argues that since the partners are subject to tax on the earnings of the business from that day forward, it is inconsistent to choose some other date as the time when the corporation's tax liability ends. We disagree. The partners are subject to personal income tax on business income after August 5. The corporation, however, pays a franchise tax which is measured by the income from its preceding income year. (Rev. & Tax. Code, § 23151. ) The income earned from the beginning of Surfcomber's final taxable year until August 5 is thus not used at all to measure the corporation's tax, and the income earned after August 5 is taxed only to the partners. Since there is consequently no double tax on the same income, we see no reason why the corporation's tax liability must end when the 'partners' begins.

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For the above reasons the effective date of dissolution or withdrawal of a foreign corporation is the date an appropriate document is filed with the Secretary of State. The Franchise Tax Board concedes that the certificate of surrender is equivalent to a certificate of withdrawal. Since this was the only appropriate document submitted to the Secretary of State, respondent was correct to use its filing date in computing the refund.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in partially denying (to the extent of \$229.26) the claim of Surfcomber, Inc. , for refund of franchise tax in the amount of \$515.86 for the taxable year ended April 30, 1973,' be and, the same is hereby sustained.

Done at Sacramento, California, this 12th day of November, 1974, by the State Board of Equalization.

Clot F. Kelly, Chairman  
John W. Lynch, Member  
Paul H. Bern, Member  
William B. Bern, Member  
\_\_\_\_\_, Member

ATTEST: W. W. Dunlop, Secretary